

Statement Of

Dimitri G. (Jim) **Daskal**, Washington Counsel

NATIONAL COALITION OF PETROLEUM RETAILERS

On

HR 668 -Amending **The Leaking Underwound Storage Tank Trust Fund Provisions**

Before The

SUBCOMMITTEE on FINANCE and HAZARDOUS **MATERIALS**

Of The

U.S. HOUSE COMMITTEE ON COMMERCE

Washington, **D.C**

March 20, 1997

SUMMARY OF TESTIMONY

1. The National Coalition of Petroleum Retailers (**NCPR**), serves as the chief advocate of the interests of America's 50,000 "mom and pop" independent gasoline retailers. We strongly support HR **668**, as we supported **HR 3391** before this Subcommittee and through passage by the House last year.

2. While many talk the talk of "**common** sense initiatives". HR 668 walks the walk along the path of common sense, by **ensuring** that the underground tank program, a model of a **successful** state -federal regulatory program will continue to serve as the leading example of what can be accomplished when federal, state, and local governments work in cooperation with the regulated community towards the goal of cost-effective protection of human health and the environment,

Those who talk the talk, must now be ready to walk the **walk**, and recognize that the **UST** program is an example for other Agency "shops" to follow, and that the UST program stands in marked contrast to other regulatory initiatives such as:

(a) EPA's procedurally **deficient**, heavy handed, time hungry, attacks on gas station and garage service bay drains, which no one considered to be "Class V Injection Wells"; the "**UIC**" program.

(b) EPA Regional Offices **launching Superfund** attacks on the very people who have voluntarily done the most to mitigate the effects of over two hundred million gallons of "do-it-yourselfer" used oil being dumped into our environment each year, and even dragging our members who recycled oil at certain sites pursuant to the urging or compulsion of state and local governments into the Super-fund quagmire; and

© EPA's failure to comply with the **Small** Business Regulatory Enforcement Fairness Act with

respect to what is the most potentially costly **rulemaking** of all: the proposals to tighten the ozone and particulate matter National Ambient Air Quality Standards on the “rationale” that this rulemaking would not have a major impact on small business. In fact many areas would be redesignated as a matter of law; and would be **compelled** by the statute to adopt control measures such as enhanced vehicle inspection and maintenance (I and M), and redundant Stage II vapor recovery controls. The latter is an extremely costly proposition that would cause a large number of station closures in areas such as rural Ohio, and in effect “ Robs Peter to Pay Paul”; because our members limited resources would be diverted **from** compliance with the 1998 underground tank regulatory deadline, where they would most benefit human health and the environment.

3. With the 1998 deadline fast approaching, and EPA’s Office **of Underground** Storage Tanks slated to fade from the scene, it is more important than ever that the states, who bear the primary responsibility for the UST **program in any event**, be given the tools needed. *i.e. **funding and flexibility*** to ensure that this program remains a model of what a public sector/private sector team can accomplish.

4. The pressure on the states is only going to increase as the deadline nears. It is very important that policy makers at **all** levels of government be aware of the fact that thousands of gasoline station franchise agreements will be coming **up** for renewal; and **franchisors** will be required to decide whether or not to make the investment in upgrading the facility.

In the event the **franchisor** decides that it does not wish to make the investment; the Petroleum Marketing Practices Act, 15 U.S.C. 2801, 2802@)(3)(D), requires that an offer to sell the leased marketing premises be made to the franchisee. As a result, many stations and their tanks will be **sold and** replaced in the remaining 21 months.

Many will simply close, and such closure must be done in accordance with existing federal and state regulations.

NCPR expects a significant “1998 Bubble” to occur, that will stress the resources of states and their existing underground tank trust funds. as locations are closed and existing contamination is discovered Accordingly it is absolutely critical that The UST funds not be diverted to other uses such as deficit reduction and the Underground Injection Control Program- We must remain faithful to the original intent of this program; and to put our limited resources where we will get the most environmental bang for the buck : the UST program. We must maximize available UST funding, not divert it to political pet programs.

5. Flexibility, as well as funding must be given to the states to the maximum extent possible.

While we recognize the political realities involved in getting this worthy legislation passed, NCPR would prefer that greater flexibility than that incorporated in HR 668 be granted to the states, such as that contained in HR 3391, as introduced in the 104th Congress.

For example, NCPR believes that states should have the flexibility to use federal UST funds in state financial assistance programs for small marketers. The simple fact of the matter is that an “ounce of prevention” in the form of upgrading tanks to prevent leaks from occurring in the first instance is far more cost effective than the “pound of cure” represented by corrective actions, even risk based corrective actions (‘Rebecca’s) after a leak has occurred.

Nevertheless, we recognize that such use of the federal fund has never been permitted. and that others whose support is needed if we are to achieve our common goal of enacting HR 668 as

quickly as possible do not share that goal.

6. The prohibition on the use of federal funds in state financial assistance programs is in need of clarification, at a minimum in the Report language, in order to avoid possible challenges based upon federal preemption, or an allegation that a state that receives **funds** through a cooperative agreement somehow runs afoul of this prohibition if addition **funds** are placed in financial assistance programs.

States **from** California to Delaware have enacted financial assistance programs, often using very strong legislative language on the issue of whether such programs are in the best interests of the citizens of the state. For example, California's "Barry **Keene** Underground Tank Fund" expressly declares that it is in the best interest of the people of the state to provide financial assistance to small businesses, farmers and other tank owners.

The choices of the state legislatures that have enacted these programs must be respected. It must be made clear that Congress is simply electing not to venture into an area that it has not ventured into before, and is not questioning the wisdom of those states that already have, or may in the future enact financial assistance programs.

7. NCPR strongly disagrees with the notion that allowing federal funds to be used in state **upgrade programs** is a "subsidy to competitors" or allows those who have delayed coming into compliance a form of special treatment.

Many of our members have been contractually prohibited from touching the **tankfield** at their stations, yet, as previously discussed, these same people are going to be placed into a "buy or die" situation by operation of the **PMPA**. NCPR joins the call for strong enforcement of the regulations against true **recalcitrants**.

Those who **refuse** to comply **are** the people who are receiving a competitive subsidy, as evidenced by application of EPA's "**BEN**" model, which measures the economic benefit to a party that comes about by avoiding regulatory compliance and the costs that come with compliance.

When one of our members receives money from a state program to do **an** upgrade, it almost always is in the form of a loan. Substantial debt service is acquired, and it is **very** difficult to pass through such costs due to the competition that exists in retail gasoline marketing.

There are many government subsidies, such as the ethanol obscenity, that **affect** gasoline **marketing: state financial assistance programs are** literally a drop in **the** bucket by comparison,

Thus, it is **NCPR's** position that the "subsidization" issue provides no basis for prohibiting use of federal money in state financial assistance programs - the basis for any prohibition must be the desire of Congress to remain in the position of **absolute neutrality**

8. NCPR supports strong enforcement against those parties that are able to, but unwilling to comply with their regulatory obligations, for it is they who are being effectively subsidized, and competing unfairly with our members.

9. NCPR's **members have** had to swallow the LUST tax, because there is no way to put a tenth of a cent per gallon on the street - indeed we have had to swallow most of the 4.3 cent per gallon portion of the gas tax earmarked for **deficit** reduction in what **has** been a terrible precedent, that should never be repeated.

Accordingly, our members were very disturbed to hear that the Administration may be proposing today use of the LUST money for purposes such as funding the out of control "**UIC**" offices in the various Regional Headquarters. NCPR is adamantly opposed to **any such** non-UST related use of our money